

**62A-4a-202.3 Investigation -- Supported or unsupported reports -- Child in protective custody.**

- (1) When a child is taken into protective custody in accordance with Section 62A-4a-202.1, 78A-6-106, or 78A-6-302, or when the division takes any other action which would require a shelter hearing under Subsection 78A-6-306(1), the division shall immediately initiate an investigation of the:
  - (a) circumstances of the child; and
  - (b) grounds upon which the decision to place the child into protective custody was made.
- (2) The division's investigation shall conform to reasonable professional standards, and shall include:
  - (a) a search for and review of any records of past reports of abuse or neglect involving:
    - (i) the same child;
    - (ii) any sibling or other child residing in the same household as the child; and
    - (iii) the alleged perpetrator;
  - (b) with regard to a child who is five years of age or older, a personal interview with the child:
    - (i) outside of the presence of the alleged perpetrator; and
    - (ii) conducted in accordance with the requirements of Subsection (7);
  - (c) if a parent or guardian can be located, an interview with at least one of the child's parents or guardian;
  - (d) an interview with the person who reported the abuse, unless the report was made anonymously;
  - (e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including:
    - (i) school personnel; and
    - (ii) the child's health care provider;
  - (f) an unscheduled visit to the child's home, unless:
    - (i) there is a reasonable basis to believe that the reported abuse was committed by a person who:
      - (A) is not the child's parent; and
      - (B) does not:
        - (I) live in the child's home; or
        - (II) otherwise have access to the child in the child's home; or
    - (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
  - (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination, obtained no later than 24 hours after the child is placed in protective custody.
- (3) The division may rely on a written report of a prior interview rather than conducting an additional interview, if:
  - (a) law enforcement:
    - (i) previously conducted a timely and thorough investigation regarding the alleged abuse, neglect, or dependency; and
    - (ii) produced a written report;
  - (b) the investigation described in Subsection (3)(a)(i) included one or more of the interviews required by Subsection (2); and
  - (c) the division finds that an additional interview is not in the best interest of the child.
- (4)
  - (a) The division's determination of whether a report is supported or unsupported may be based on the child's statements alone.

- (b) Inability to identify or locate the perpetrator may not be used by the division as a basis for:
  - (i) determining that a report is unsupported; or
  - (ii) closing the case.
- (c) The division may not determine a case to be unsupported or identify a case as unsupported solely because the perpetrator was an out-of-home perpetrator.
- (d) Decisions regarding whether a report is supported, unsupported, or without merit shall be based on the facts of the case at the time the report was made.
- (5) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:
  - (a) the child does not have a natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the child;
  - (b)
    - (i) shelter of the child is a matter of necessity for the protection of the child; and
    - (ii) there are no reasonable means by which the child can be protected in:
      - (A) the child's home; or
      - (B) the home of a responsible relative;
  - (c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or
  - (d) the child has left a previously court ordered placement.
- (6)
  - (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the division shall:
    - (i) convene a child protection team to review the circumstances regarding removal of the child from the child's home or school; and
    - (ii) prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78A-6-306.
  - (b) The child protection team described in Subsection (6)(a)(i) shall include:
    - (i) the caseworker assigned to the case;
    - (ii) the caseworker who made the decision to remove the child;
    - (iii) a representative of the school or school district where the child attends school;
    - (iv) the peace officer who removed the child from the home;
    - (v) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;
    - (vi) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and
    - (vii) any other individuals determined appropriate and necessary by the team coordinator and chair.
  - (c) At the 24-hour meeting, the division shall have available for review and consideration the complete child protective services and foster care history of the child and the child's parents and siblings.
- (7)
  - (a) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be:
    - (i) except as provided in Subsection (7)(b), audio or video taped; and
    - (ii) except as provided in Subsection (7)(c), conducted with a support person of the child's choice present.
  - (b)

- (i) Subject to Subsection (7)(b)(ii), an interview described in Subsection (7)(a) may be conducted without being taped if the child:
    - (A) is at least nine years old;
    - (B) refuses to have the interview audio taped; and
    - (C) refuses to have the interview video taped.
  - (ii) If, pursuant to Subsection (7)(b)(i), an interview is conducted without being taped, the child's refusal shall be documented, as follows:
    - (A) the interviewer shall attempt to get the child's refusal on tape, including the reasons for the refusal; or
    - (B) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the interviewer shall:
      - (I) state on the tape that the child is present, but has refused to have the interview, refusal, or the reasons for the refusal taped; or
      - (II) if complying with Subsection (7)(b)(ii)(B)(I) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.
  - (iii) The division shall track the number of interviews under this Subsection (7) that are not taped, and the number of refusals that are not taped, for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other interviewers.
- (c)
- (i) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an interview of a child may not be an alleged perpetrator.
  - (ii) Subsection (7)(a)(ii) does not apply if the child refuses to have a support person present during the interview.
  - (iii) If a child described in Subsection (7)(c)(ii) refuses to have a support person present in the interview, the interviewer shall document, in writing, the refusal and the reasons for the refusal.
  - (iv) The division shall track the number of interviews under this Subsection (7) where a child refuses to have a support person present for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals than other interviewers.
- (8) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.
- (9) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child until all reasonable efforts have been made to locate the child and family members including:
- (a) visiting the home at times other than normal work hours;
  - (b) contacting local schools;
  - (c) contacting local, county, and state law enforcement agencies; and
  - (d) checking public assistance records.

Amended by Chapter 3, 2008 General Session